

**THE STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 09-009

UNITIL ENERGY SYSTEMS, INC.

**Petition for Approval of Default Service Solicitation
And Proposed Default Service Tariffs**

Order Approving Petition

ORDER NO. 25,011

September 4, 2009

APPEARANCES: Gary M. Epler, Esq. on behalf of Unitil Energy Systems, Inc.; Kenneth Traum of the Office of Consumer Advocate on behalf of residential ratepayers; and Suzanne G. Amidon, Esq. on behalf of the Staff of the Public Utilities Commission.¹

I. PROCEDURAL HISTORY

On August 28, 2009, Unitil Energy Systems, Inc. (UES or Company) filed with the New Hampshire Public Utilities Commission (Commission) a petition requesting approval of its solicitation and procurement of default service rates for its large commercial and industrial customers (G1) supply requirement for the three-month period of November 1, 2009 through January 31, 2010, and the 12-month period of November 1, 2009 through October 31, 2010 for 25 percent of its small customers (Non-G1)² supply requirements.

The filing was made pursuant to the terms of a settlement agreement, which set forth the procedures for UES to procure default service power supply for both its G1 and Non-G1 customer groups, and was approved by the Commission in *Unitil Energy Systems, Inc.*, Order No. 24,511, 90 NH PUC 378 (2005). Pursuant to the terms of that agreement, UES solicits

¹ James Rodier, Esq. on behalf of Freedom Logistics, LLC and Halifax-American Energy Company previously appeared in this docket but did not participate in this phase of the proceeding.

² Non-G1 includes residential and small commercial (G2) customer classes.

default service supply for its G1 customers on a quarterly basis in three-month blocks, and establishes fixed monthly prices that vary from month to month. For Non-G1 customers, UES solicits a portfolio of power supply, and establishes a fixed rate for a six-month period. In the instant filing, the Company proposes a rate for Non-G1 customers for the period November 1, 2009 through April 30, 2010. According to the petition, UES selected PSEG Energy Resources and Trade, LLC (PSEG ER&T) as supplier for its G1 customers default service power supply and TransCanada Power Marketing Ltd (TCPM) for the Non-G1 customers default service power supply. UES stated that the resulting default service rates plus Renewable Portfolio Standard (RPS) compliance costs will increase bills by 2.9 percent for residential customers, 3.0 percent for G2 customers, 9.5 percent for large commercial customers and 1.7 percent for outdoor lighting customers, compared to current rates.

In support of its petition, UES filed the testimony of Robert S. Furino and Linda S. McNamara, a redacted bid evaluation report (Schedule RSF-1), a copy of the request for proposals (RFP) for default service (Schedule RSF-2) and proposed tariffs. With its petition, UES also included its quarterly customer migration report and a motion for confidential treatment of certain information contained in the filing and denoted as Tab A. The Office of Consumer Advocate (OCA) previously filed a letter on February 20, 2009 stating that it would be participating in this docket on behalf of residential ratepayers.

On July 17, 2009, UES filed a letter summarizing its agreement with Commission Staff regarding the Company's lead lag report that remained unresolved following the hearing on the Company's default service filing on June 17, 2009.³ The letter stated that the Company agreed to adopt Staff's recommendation regarding supplier payment terms, but noted that the Company retains the flexibility to negotiate changes to supplier contracts if those changes lower costs to

³ See Order No. 24,980 (June 19, 2009) in Docket No. DE 09-009.

ratepayers. The letter also stated that UES agreed to adopt Staff's recommendations regarding the calculation of the expense lead for renewable energy certificates, and certain expense lead calculations for power supply.

On July 20, 2009, the Company filed a settlement agreement between Staff and UES regarding the Company's plan for complying with the requirements of New Hampshire's Electric Renewable Portfolio Standards Law (RSA 362-F) (REC Procurement Settlement Agreement) in compliance with Order No. 24,980.

On August 28, 2009, Staff filed a recommendation to the Commission requesting that it direct UES to file its next and all future default service filings at a time that allows the Commission to hear both UES' and Granite State Electric Company d/b/a National Grid's (National Grid) default service proposals on the same day. Staff noted that UES, in the instant filing, requested a final order granting the approvals needed no later than September 4, 2009, whereas National Grid planned to make its filing in mid-September. Staff said that the Commission typically schedules the default service hearings on the same day so as to allow the Staff to efficiently explore common elements in the filings, and to present its views on these common elements to the Commission.

On August 31, 2009, the Commission issued a secretarial letter scheduling UES' hearing for September 2, 2009, which was held as scheduled.

II. POSITIONS OF THE PARTIES AND STAFF

A. Unitil Energy Systems, Inc.

UES stated that, consistent with the 2005 settlement agreement, it conducted an open solicitation process, actively sought interest among potential suppliers and provided access to sufficient information to enable them to assess the risks and obligations associated with

providing the services sought. UES reported that it achieved market notification of the RFP by electronically announcing its availability to all participants in the New England Power Pool (NEPOOL) and to the members of the NEPOOL Markets Committee. UES affirmed that it also announced the issuance of the RFP to a list of contacts from energy companies that had previously expressed interest in receiving notices of solicitations. In addition, UES issued a media advisory to the power markets trade press announcing the RFP.

UES attested that, in order to gain the greatest level of market interest, it provided potential bidders with appropriate and accessible information. According to its filing, UES provided bidders with historic hourly load, historic monthly retail sales and customer counts, large customer concentration data and the evaluation loads, which are the estimated monthly volumes that UES would use to weight bids in terms of price. UES testified that it used its website to make this information available to potential suppliers. Consistent with *Unitil Energy Systems, Inc.*, Order No. 24,921 (December 12, 2008) issued in Docket No. DE 08-015, UES only solicited all-inclusive bids that included both energy and capacity supply.

UES testified that it issued the RFPs on July 28, 2009. On August 18, 2009, UES received proposals and indicative bids from several different respondents that included detailed background information on the bidding entity, proposed changes to the contract terms, and indicative pricing. UES stated that it reviewed the proposals and worked with the bidders to establish and evaluate their creditworthiness, their extension of adequate credit to UES to facilitate the transaction, their capability of performing the terms of the power purchase agreement in a reliable manner and their willingness to enter into contractual terms acceptable to UES. UES negotiated with potential suppliers who submitted proposals in order to obtain the

most favorable contract terms each supplier was willing to offer. All bidders were invited to submit final bids.

On August 25, 2009, UES received final pricing from bidders and conducted its evaluation which included both the quantitative and qualitative criteria described above. UES selected TCPM as the lowest bid for the Non-G1 customer group and PSEG ER&T as the lowest bid for the G1 customer group. UES has pre-existing power supply agreements with both PSEG ER&T and TCPM, and executed amendments to those agreements with each of the winning suppliers on August 15, 2009.⁴

Based on its selected bids and existing Non-G1 power supply contracts, UES developed Non-G1 rates by dividing the total costs for each month during the November 2009 through April 2010 period, plus an appropriate allocation of the Non-G1 reconciliation account balance at January 31, 2009, by the estimated Non-G1 kilowatt hour (kWh) purchases for the month. UES then applied an estimated loss factor of 6.40% to each monthly unit cost and, finally, averaged the monthly unit costs to arrive at the proposed fixed retail charge. Using this methodology, UES calculated a fixed default service charge for Non-G1 customers of \$0.08825 per kWh for the period November, 2009 through April, 2010. In addition, UES calculated a Non-G1 fixed RPS charge of \$0.00212 per kWh for the same six month period. Together, Non-G1 customers will pay a fixed charge of \$0.09037 per kWh, which is 4.9 percent greater than the current fixed charge of \$0.08618 per kWh.

For G1 customers, UES used a similar process, dividing the total costs for each month of the November 2009 through January 2010 period, plus an appropriate allocation of the G1 reconciliation account balance at January 31, 2009, by the estimated G1 kWh purchases for the

⁴ The TCPM power supply agreement is dated June 11, 2008 and was filed with the Commission in Docket No. DE 08-015, UES' 2008 default service docket. The PSEG ER&T power supply agreement is dated March 13, 2007 and was filed with the Commission in Docket No. DE 07-013, UES' 2007 default service docket.

month, adjusted by a loss factor of 4.591%. This process produced the following monthly default service and RPS charges for the G1 customer group:

Month:	November, 2009	December, 2009	January, 2010
DS ⁵ \$/kWh	\$0.07035	\$0.08077	\$0.09073
RPS \$/kWh	\$0.00172	\$0.00172	\$0.00224
Total \$/kWh	\$0.07207	\$0.08249	\$0.09297

The simple average of these monthly total rates is \$0.08251 per kWh, which is 14.5% greater than the current simple average of \$0.07205 per kWh. UES attributed the increased default service rates for both the G1 and Non-G1 groups to the seasonal increase in market prices associated with the winter months.

In response to questions at hearing, UES said that the Company had met its 2008 RPS compliance requirements through a combination of REC purchases and alternative compliance payments (ACPs) to the renewable energy fund as required by RSA 362-F. According to the Company, it was able to procure 75 percent of its Class III (existing biomass) and Class IV (existing small hydro) REC requirements by market purchases. The Company agreed to provide a report to the Commission on the cost of those market purchases.

At hearing, UES said that it had filed on July 20, 2009 a REC Procurement Settlement Agreement (Agreement) that establishes a formal process for procuring RECs in compliance with the requirements of the New Hampshire Electric Renewable Portfolio Standards law. Pursuant to the Agreement, UES would solicit RECs independent of default service via separate RFPs. The quantity of RECs sought via the REC RFPs will equal the Company's forecast of

⁵ "DS" refers to default service.

default service sales times the percentage obligation for each REC Class less any RECs carried forward from prior periods, RECs expected to be produced from existing long-term REC contracts and Distributed Energy Resources, and RECs acquired through unsolicited offers. The Agreement requires the Company to review any unsolicited offer to purchase RECs to determine whether the offer is lower than UES' estimate of market prices. Finally, the Settlement Agreement states UES would satisfy its RPS obligation by paying ACPs if the Company was unable to purchase sufficient RECs through the competitive bid process. UES noted that Staff had participated in the settlement. According to the Company, UES intends to issue an RFP for REC procurement in September, 2009, and, consequently, asked the Commission to approve the REC Procurement Settlement Agreement.

For 2009, UES testified that it needs to provide Class I RECs for 0.5% of sales, Class III RECs for 4.5% of sales and Class IV RECs for 1.0 % of sales.⁶ For 2010, UES said it needs to procure Class I RECS for 1.0% of sales, Class II (solar) RECs for 0.04% of sales, Class III RECs for 5.5% of sales, and Class IV RECs for 1.0% of sales. Based on information from broker sheets published by renewable energy brokers, UES currently estimates the cost of Class I RECs at \$50.00 for 2009 and \$55.00 for 2010; Class II RECs at \$80.00 for 2010 (the first year Class I RECs are required); Class III RECs at \$26.00 for 2009 and \$25.00 for 2010; and Class IV RECs at \$27.00 for 2009 and \$25.00 for 2010. Based on these presumed market prices, UES calculated the retail cost of RPS compliance for Non-G1 customers to be \$0.00212 per kWh for the period November 2009 through April 2010. For G1 customers, the retail cost of RPS compliance for the November and December, 2009 is calculated to be \$0.00172 per kWh, and for January, 2010,

⁶ Class I RECs represent "new" renewable generation, Class III RECs represent eligible biomass generation, and Class IV RECs represent qualifying small hydro generation.

\$00.224 per kWh. The different RPS charges are attributable to the different loss factors for G1 and Non-G1 customers.

At the hearing, UES responded to Staff's August 28, 2009 letter requesting that UES resume its practice of making its default service filing at a time that would allow the Commission to hear both UES' and National Grid's filings on one day. UES said it had already contacted National Grid to discuss the timing of the next filing and would work with Staff to develop a schedule for default service solicitation and filing with the Commission so that the Commission could hear National Grid's and UES' default service proceedings on the same day as has occurred in the past.

UES concluded by requesting that the Commission approve its petition and find that UES followed the solicitation process approved by the Commission, that its analysis of the bids is reasonable, and that the resulting rates are reasonable.

B. Office of Consumer Advocate

The OCA inquired whether the power supply contracts resulting from this most recent solicitation for default service power supply would impede UES' ability to comply with its obligation to offer a "green option" in default service.⁷ UES was not able to answer the question at hearing. The Company filed a letter on September 3, 2009, stating that the power supply contracts resulting from the subject solicitation would not interfere in the Company's ability to offer a green option to default service customers. The OCA concluded by stating that it did not object to UES' petition. OCA added that, while not a signatory to the RPS settlement, it does not oppose the Settlement Agreement.

⁷ OCA was referring to HB 395. See Laws of 2009, Chap. 236.

C. Staff

Staff said that it had reviewed the filing and concluded that UES had followed the solicitation and bid evaluation process approved by the Commission in Order No. 24,511. Staff also recommended approval of the REC Settlement Agreement, which establishes a least cost process for procuring RECs in compliance with the RPS Law to allow UES to issue an RFP in September as planned. Finally, Staff recommended that the Commission approve the petition.

III. COMMISSION ANALYSIS

A. Motion for Confidentiality

First, we address UES' motion for confidential treatment. We note that UES has filed similar motions with its default service filings in the past and that we have granted motions for confidential treatment in such cases. *See Unitil Energy Systems, Inc.*, Order No. 24,716, 91 NH PUC 617 (December 15, 2006), *Unitil Energy Systems, Inc.*, Order No. 24,766 (June 22, 2007) and *Unitil Energy Systems, Inc.*, Order No. 24,861 (June 20, 2008) and *Unitil Energy Systems, Inc.* Order No. 24,980 (June 19, 2009). On September 4, 2009, UES submitted a revision to its confidentiality request to protect price information until May 1, 2010. The letter also withdrew the request to protect on pages 012 and 013 of Unitil exhibit No. 7 {Confidential Tab A}.

We have conducted an *in camera* review of Tab A and the other materials for which UES seeks confidential treatment. We agree that the information concerning the "Total G1 Class DS Supplier Charges," "Working Capital Requirement," "Supply Related Working Capital," and "Provision for Uncollected Accounts" found in columns (a),(d), (f) and (g) of page 2 of Schedule LSM-4, taken in combination would reveal the wholesale cost of power from the winning bidders and, therefore, constitutes confidential, commercial, or financial information of the sort contemplated by RSA 91-A:5, IV.

UES is requesting protective treatment of this information for a limited period of time. Pursuant to requirements of the Federal Energy Regulatory Commission (FERC), each wholesale supplier is obligated to report to the FERC the price and volume of its wholesale contractual sales during each quarter and to identify the party to whom the sale has been made, within 30 days of the end of that quarter. *See Revised Public Utility Filing Requirements*, 99 FERC ¶ 61,107 (April 25, 2002) and 18 CFR Parts 2, 35. FERC makes this information available to the public through electronic quarterly reports. Therefore, insofar as confidential treatment is requested for wholesale contractual sales, we grant such information confidential treatment until May 1, 2010, at which point the information will have been published by the FERC.

The Company also requested confidential treatment of the amendments to the power supply agreements with TCPM and PSEG ER&T. We do not find the public's interest in review of the financial, commercially sensitive information sufficient to outweigh the benefit derived from maintaining the confidentiality of such information, given that the benefits of confidentiality accrue to UES' customers, whose rates will likely be lower as a result. *See Union Leader Corp. v. New Hampshire Housing Fin. Auth.*, 142 N.H. 540 (1997) (requiring application of balancing test to RSA 91-A:5, IV determinations, weighing public's interest in disclosure against privacy interest). We therefore grant the motion for confidential treatment.

Consistent with our applicable rule, N.H. Code Admin. Rules Puc 203.08(k), the confidential treatment provisions of this Order are subject to the on-going authority of the Commission, on its own motion or on the motion of Staff, any party or other member of the public, to reconsider the determination.

B. Default Service

We have reviewed the REC Settlement Agreement filed July 20, 2009 and conclude that it will enable UES to meet its obligation under the RPS Law in a manner that is transparent and minimizes costs to customers. For these reasons, we find the REC Settlement Agreement to be in the public interest.

We have also reviewed UES' July 17, 2009 letter that summarizes the Company's agreement to adopt Staff recommendations regarding UES' 2008 lead/lag study. The agreement addresses each of the four issues raised by Staff in its June 4, 2009 testimony. In particular, with respect to Staff's recommendation regarding supplier payment terms, we find it appropriate and in the public interest for UES to reserve the right to negotiate different payment terms if the result is lower costs to UES' customers. Therefore, we approve the agreement specified in the letter.

Regarding UES' analysis of the bids and its selection of the winning bidders, we find that it substantially complied with the procedures approved in Order No. 24,511 for the G1 default service solicitation for the three months November 2009 through January 2010. We also find that UES substantially complied with the bid procedures regarding its selection of a supplier for one 25% block of 12 month default service requirements for Non-G1 default service customers beginning November 2009. We are satisfied that UES met all procedural requirements set forth in prior orders and the result is consistent with the requirement of RSA 374-F:3, V(c) that default service "be procured through the competitive market." We also find that UES' evaluation of the bids and its selection of PSEG ER&T as supplier for G1 supply, and TCPM as supplier for Non-G1 DS supply is reasonable. We approve UES' request to include the wholesale power costs reflected in the winning bids in default service retail rates beginning November 1, 2009.

Based upon the foregoing, it is hereby

ORDERED, that the amendment to the power supply agreement between PSEG Energy Resources and Trade, LLC. and Unitil Energy Systems, Inc. to provide 100% of the default service power supply to G1 customers for the period November 1, 2009 through January 31, 2010 is hereby APPROVED; and it is


FURTHER ORDERED, that the 12-month power supply agreement between TransCanada Power Marketing and Unitil Energy Systems, Inc. to provide one 25% block of default service power supply to Non-G1 customers beginning November 1, 2009 is hereby APPROVED; and it is

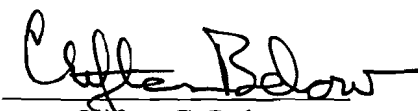
FURTHER ORDERED, that UES's request for confidential treatment is APPROVED, as discussed herein; and it is

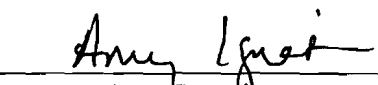
FURTHER ORDERED, that the REC Procurement Settlement Agreement and Lead Lag Agreement are APPROVED; and it is

FURTHER ORDERED, that UES shall file conforming tariffs within 30 days of this order consistent with N.H. Admin. Rules Puc 1606.02.

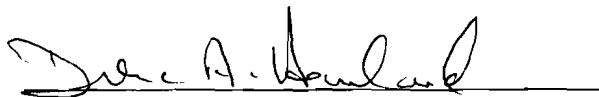
By order of the Public Utilities Commission of New Hampshire this fourth day of September, 2009.


Thomas B. Getz
Chairman


Clifton C. Below
Commissioner


Amy Ignatius
Commissioner

Attested by:


Debra A. Howland
Executive Director